

**State Of Indiana  
Department Of State Revenue**

**In Regards To The Matter Of:**

**S.A.F.E. Youth Program  
Docket No. 29-2001-0320**

**Findings Of Fact, Conclusions Of  
Law And Departmental Order**

An administrative hearing was held on Thursday, March 7, 2002 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, an Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Norman L. Reed of Reed & Smith, 120 E. Market Street, Suite 179, Indianapolis, IN 46204, represented the Petitioner. Attorney Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-1, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

**Reason For Hearing**

On Monday, November 26, 2001 the Indiana Department of Revenue revoked Petitioner's Charity Gaming License. The Department is attempting to suspend Petitioner's right to conduct charity gaming for a period of three (3) years. The Department also wishes to prohibit Petitioner's Vice-President Scott M. Locke, Sr.; Petitioner's President Steven M. Locke, Jr.; and Deborah Kelly from associating with charity gaming for a period of three (3) years each. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-1.

**Summary Of Facts**

- 1) On October 11, 2001, the Indiana Department of Revenue received a request from Petitioner to add additional operators and workers to its annual bingo license.
- 2) The Department's Criminal Investigation Division attempted to verify the additional information supplied by the Petitioner.
- 3) Indiana Department of Revenue's Agents from the Criminal Investigation Division (CID) interviewed only one of the individuals listed by the Petitioner as a worker.
- 4) The Department's investigation allegedly revealed that the Petitioner was attempting to use workers and operators who were not "members" as required by IC 4-32-1-1 *et seq.*

- 5) On November 26, 2001 the Indiana Department of Revenue revoked Petitioner's charity gaming license and suspended Petitioner's right to conduct charity gaming for a period of three (3) years. The Department also prohibited Petitioner's Vice-President Scott M. Locke, Sr.; Petitioner's President Steven M. Locke, Jr.; and Deborah Kelly from associating with charity gaming for a period of three (3) years each.

### **Findings Of Facts**

- 1) On October 11, 2001, the Indiana Department of Revenue received a request from Petitioner to add additional operators and workers to its annual bingo license. (Department's Exhibit A).
- 2) The list contained seventeen names of individuals who were to be the new workers, one individual who was to be an operator, and one person who was listed as an officer. (Department's Exhibit A).
- 3) Indiana Department of Revenue's Agents from the Criminal Investigation Division (CID) personally interviewed only two of the proposed workers. (Record at 7-10).
- 4) The first worker interviewed, Mr. Steven Bowman, made a written statement. (Department's Exhibit B).
- 5) Petitioner objected to the written statement based upon the grounds that it constituted hearsay. (Record at 10).
- 6) The second worker interviewed, Ms. Tanesha Morris, was too upset and scared by the Department's investigators to make a written statement. (Record at 28).
- 7) According to the Department's witness, both individuals stated that they were not members of the Petitioner's organization. (Record at 9 and 10 respectively).
- 8) Petitioner objected to the statements made by Mr. Bowman and Ms. Morris as hearsay. (Record at 10).
- 9) The individuals listed in Department's Exhibit A, were not listed on Petitioner's charity gaming application as is required by Indiana law.
- 10) On November 26, 2001 the Indiana Department of Revenue revoked the Petitioner's charity gaming license.
- 11) The license revocation was based upon the Department's own investigation.
- 12) The Petitioner held a meeting in July of 2001. At this meeting it was decided that the organization needed more workers. (Record at 17).
- 13) Petitioner's witness testified that at the July 2001 meeting she was designated as the person who would actively recruit new members. (Record at 42).
- 14) Petitioner also stated that she began to recruit new members immediately following the meeting. (Record at 42).
- 15) When Petitioner's witness was asked how she found new members she stated, "Well, considering I used to work at a bingo hall, so I kind of went in and just found people that I knew who had the experience and that could really help the organization out." (Record at 42).
- 16) According to Petitioner's staff meeting minutes for August 20, 2001 all seventeen (17) individuals recruited by the Petitioner were voted on and accepted as members. (Petitioner's Exhibit 2).

- 17) These seventeen (17) new members were the same members included in Department's Exhibit A.
- 18) Steve Bowman, Jr. and Deborah Kelly were both sent letters dated December 14, 2001 which stated, "Congratulations on your new membership to the S.A.F.E. Youth Program...Your new membership entitles you to a five year agreement, which includes participating in fun (sic) raisers, charitable activities and gaming..." (Petitioner's Exhibit #5).
- 19) Tanesha Morris was listed on Department's Exhibit A as having been a member for two months.
- 20) Ms. Tanesha Morris was sent a letter dated December 12, 2001 stating that her membership dues were delinquent as of November 1, 2001 and her membership was revoked. (Petitioner's Exhibit #5).
- 21) Petitioner's Exhibit #4 contains fifteen (15) membership certification certificates. Among these certificates are Mr. Bowman's and Deborah Kelly's. These certificates were dated on October 18, 2001.
- 22) Petitioner's Exhibit #4 does not contain a membership certification certificate for Ms. Tanesha Morris.
- 23) Department's Exhibit A is a list of individuals Petitioner requested to be added to its list of potential workers and operators for its gaming activities.
- 24) The Petitioner sent the list of workers and operators to the Department by facsimile transmission on October 11, 2001. (Department's Exhibit A).
- 25) On this list were the names Steve V. Bowman, Jr. and Tanesha Morris who were purported to have been a members for two (2) months and Deborah Kelly who is listed as a member for two (2) years. (Department's Exhibit A).
- 26) The meeting minutes contained in Petitioner's Exhibits #1, #2, and #3 were not signed nor dated by any member of Petitioner's organization.
- 27) Petitioner's Exhibit #1 is the minutes of a meeting allegedly held on July 22, 2001. The minutes state in pertinent part, "lots of work to be done in preparation for opening up a bingo hall. a) must find workers and operators who would join the organization some who may have experience in this type of operation...." Later in the minutes is the statement, "Debra Kelly volunteered to contact and recruit several people to join the organization who have previously volunteered to help with bingo in the past with other organizations..."
- 28) In July of 2001, Deborah Kelly was recruiting workers and operators for Petitioner's organization, and she was not even a member of the Petitioner's organization according to its own documents submitted at hearing. (See Petitioner's Exhibit #4).

### **Statement Of Law**

- 1) Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).
- 2) The Department's administrative hearings are conducted pursuant to IC § 6-8.1-5-1 et seq. (See, Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993)).

- 3) Pursuant to 45 IAC 15-5-3(b)(7), “The hearing is not governed by any rules of evidence. The department is expressly excluded from the requirements of the Administrative Adjudication Act.(renamed the Administrative Order and Procedures Act).”
- 4) Even if the Department were bound by the Administrative Orders and Procedures Act (AOPA), the rules clearly state that hearsay evidence that is properly objected to and does not fall with an exception to the hearsay rule may not form the sole basis of a resulting order. The AOPA does not say that the evidence cannot be heard, presented, or considered.
- 5) IC 4-32-9-4 states, “Each organization applying for a bingo license...must submit to the department a written application...The application must include the following: (7) The name of each proposed operator and sufficient facts relating to the proposed operator to enable the department to determine whether the proposed operator is qualified to serve as an operator. (8) A sworn statement signed by the presiding officer and secretary of the organization attesting to the eligibility of the organization for a license...”
- 6) IC 4-32-9-26 provides, “An individual may not be an operator for more that one (1) qualified organization during a calendar month...”
- 7) IC 4-32-9-27 states, “An operator or a worker may not directly or indirectly participate, other than in a capacity as operator or worker, in an allowable event...”
- 8) IC 4-32-9-28 states, “An operator must be a member in good standing of the qualified organization that is conducting an allowable event for at least one (1) year at the time of the allowable event.”
- 9) According to IC 4-32-9-29, “A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event.”
- 10) IC 4-32-12-1(a) (4) provides in pertinent part, “The Department may suspend or revoke the license...of...a qualified organization or an individual ...for any of the following: (1) Violation of a provision of this article or of a rule of the department...(4) Commission of fraud, deceit, or misrepresentation.”
- 11) Fraud is defined as the intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Any kind of artifice employed by one person to deceive another. Elements of a cause of action for fraud include a false representation of a present or past fact made by defendant, action in reliance thereupon by plaintiff, and damage resulting to plaintiff from such misrepresentation. Black’s Law Dictionary 337 (5<sup>th</sup> ed. 1983).
- 12) The elements of actual fraud are (1) a false statement of past or existing material fact (2) made with knowledge it was false or made recklessly without knowledge of its truth or falsity, (3) made for the purpose of inducing the other party to act upon it, (4) and upon which the other party did justifiably rely and act, (5) proximately resulting in injury to the other party. See Epperly v. Johnson, 734 N.E.2d 1066 (Ind. App. 2000).

- 13) Deceit is defined as a fraudulent and deceptive misrepresentation, artifice, or device used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. To constitute “deceit”, the statement must be untrue, made with knowledge of its falsity or with reckless and conscious ignorance thereof, especially if parties are not on equal terms, made with intent that plaintiff act thereon or in a manner apparently fitted to induce him to act thereon, and plaintiff must act in reliance on the statement in the manner contemplated, or manifestly probable, to his injury. Black’s Law Dictionary 211 (5<sup>th</sup> ed. 1983).
- 14) Misrepresentation is defined as any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. An untrue statement of fact. An incorrect or false representation. That which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists. Colloquially it is understood to mean a statement made to deceive or mislead. Black’s Law Dictionary 518 (5<sup>th</sup> ed. 1983).
- 15) IC 4-32-12-3 states, In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:
  - (1) Suspend or revoke the license.
  - (2) Lengthen a period of suspension of the license.
  - (3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization.
  - (4) Impose an additional civil penalty of not more than one hundred dollars (\$100) for each day the civil penalty goes unpaid.

### **Conclusions Of Law**

- 1) The Department’s findings are prima facie evidence that the Department’s claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made.
- 2) The Petitioner’s list of names submitted to the Department for additional operators and workers to be placed on its annual bingo license contained the names of individuals who according to Petitioner’s own documentation did not meet the statutory requirements for being a worker or an operator.
- 3) The list specifically names Deborah Kelly as a proposed operator and a member of Petitioner’s organization for two (2) years. The list also contains the names of Steve V. Bowman, Jr. and Tanesha Morris as proposed workers and having been members of Petitioner’s organization for a period of two (2) months.
- 4) These statements along with the testimony of the Petitioner’s witnesses all show that the Petitioner was more concerned with obtaining workers for gaming than in expanding their membership.
- 5) The Petitioner has made incorrect statements to the Department in order to procure a license to conduct charity gaming.
- 6) The documentation submitted to the Department by the Petitioner in an attempt to convince the Department that Deborah Kelly, Steve V. Bowman, Jr., and Tanesha Morris were legitimate members of its organization for the requisite amount of time constitutes a misrepresentation of the facts.

- 7) Department's investigation has revealed that the Petitioner was attempting to use workers and operators who were not "members" as required by IC 4-32-1-1 *et seq.*
- 8) Pursuant to IC 4-32-12-1(a)(4) the Department may suspend or revoke the license of a qualified organization or an individual for any violation of a provision of Article 32 or for the commission of fraud, deceit, or misrepresentation.

### **Departmental Order**

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's protest is denied in part and sustained in part. The Petitioner is hereby prohibited from conducting charity gaming for a period of three (3) years. Scott M. Locke, Sr.; Steven M. Locke, Jr. are prohibited from participating in charity gaming activities in the State of Indiana for a period of one (1) year. Deborah Kelly is prohibited from participating in charity gaming activities in the State of Indiana for a period of two (2) years.

- 1) Under IC 6-8.1-5-1, the organization may request a rehearing. However, rehearings are granted only under unusual circumstances. Such circumstances are typically the existence of facts not previously known that would have caused a different result if submitted prior to issuance of the Departmental Order.
- 2) A request for rehearing shall be made within seventy-two (72) hours from the issue date of the Departmental Order and should be sent to the **Indiana Department of Revenue, Legal Division, Appeals Protest Review Board**, P.O. Box 1104, Indianapolis, Indiana 46206-1104.
- 3) Upon receipt of the request for rehearing, the Department will review the respective file and the rehearing request to determine if sufficient new information has been presented to warrant a rehearing.
- 4) The Department will then notify the organization in writing whether or not a rehearing has been granted. In the event a rehearing is granted, the organization will be contacted to set a rehearing date.
- 5) If the request for rehearing is denied or a request is not made, all administrative remedies will have been exhausted. The organization may then appeal the decision of the Department to the Court of proper jurisdiction.

**This Order Shall Become The Final Order Of The Indiana Department Of State Revenue Unless Objections Are Filed Within Seventy-Two (72) Hours From The Date The Order Is Issued.**

**Dated:** \_\_\_\_\_

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**Bruce R. Kolb / Administrative Law Judge**